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**7535-01-U**

## **NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 707**

**RIN 3133-AC57**

### **Truth in Savings**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** As required by the Truth in Savings Act, NCUA is finalizing its rule and official staff interpretation to address the uniformity and adequacy of information provided to members when they overdraw their share accounts. The amendments address services referred to as “bounced-check protection” or “courtesy overdraft protection” that credit unions may use to pay members’

checks and allow other overdrafts when there are insufficient funds in the account.

**DATES:** This rule became effective December 8, 2005. To allow time for any necessary system modifications, however, the mandatory compliance date for the final rule is amended to October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Moissette I. Green, Staff Attorney, at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. The Interim Rule**

The Truth in Savings Act (TISA) requires financial institutions to disclose fees, the annual percentage yield, interest rate, and other terms associated with their accounts. 12 U.S.C. 4301 et seq. TISA also requires NCUA to promulgate regulations substantially similar to those promulgated by the Board of Governors of the Federal Reserve System (Federal Reserve) within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, NCUA is adopting a final rule substantially similar to the Federal Reserve's May

2005 rule that requires banks to make certain disclosures when they offer or promote courtesy overdraft protection services to consumers. 70 FR 29582 (May 24, 2005).

The Federal Reserve's implementation of TISA, 12 CFR part 230 (Regulation DD), requires banks to disclose rates and fees charged as a part of "bounced-check protection" or "courtesy overdraft protection" programs offered as an alternative to traditional overdraft lines of credit. Regulation DD also requires financial institutions that promote the payment of overdrafts in an advertisement to: (1) disclose the total fees imposed for paying overdrafts and returning unpaid items on periodic statements for both the statement period and the calendar year to date and (2) include certain other disclosures in advertisements of courtesy overdraft services.

In November 2005, the NCUA Board issued an interim final rule, with a 60-day comment period, that adopted revisions to part 707 and the accompanying official staff interpretation to comply with the Board's obligation under TISA. 70 FR 72895 (December 8, 2005). NCUA's interim rule was substantially similar to Regulation DD, except for some modifications to account for the unique nature of credit unions. The rule consolidated the guidance for credit unions that promote the payment of overdrafts in a new §707.11 to facilitate compliance. To give credit unions sufficient time to implement the necessary system changes to

comply with the regulation, NCUA established that compliance with the final rule would not become mandatory until July 1, 2006.

## **II. Public Comments**

The interim rule solicited comment about current courtesy overdraft services and the estimated burden of the new requirements. NCUA received 16 comments regarding the interim rule from: seven credit unions, two credit union trade associations, five credit union leagues, a consumer protection group, and one consumer.

Of the comments NCUA received from credit unions, two believed the rule was overly burdensome, and five requested additional time for compliance. Four officials from one credit union provided the same comment, which NCUA has counted as one, that the disclosure requirements of the final rule are unduly burdensome and expensive. Another credit union commented on NCUA's Paperwork Reduction Act analysis and stated that NCUA had underestimated the burden to credit unions, especially as it relates to employee training. The Board notes that it has estimated eight hours for each credit union to undertake a one-time reprogramming and updating of their information systems and an additional forty hours to update advertising materials. As the required changes essentially are the identification of fees, the Board believes that employee training in this area will be minimal and did not identify a separate category of burden hours for training.

Five credit unions commented that the July 1, 2006 mandatory compliance date did not give credit unions and their software providers sufficient time to make the necessary system changes and test their programs. They requested NCUA change the mandatory compliance date to January 1, 2007.

One credit union trade association also commented on the short time between the rule's effective and the mandatory compliance dates and recommended NCUA change the date to December 31, 2006. Additionally, it requested NCUA clarify the requirements for periodic statements. While the substance of this final rule is unchanged, a brief summary of the rule appears below to help credit unions understand its requirements.

The other credit union trade association specifically supported the regulation of courtesy overdraft programs under the TISA instead of under the Truth in Lending Act, 15 U.S.C. 1601 et seq. (TILA), but like the other trade association and the credit unions, objected to the July 1, 2006 mandatory compliance date and requested a January 1, 2007 date. It also commented that NCUA should determine if there is flexibility in the rule due to the burden to credit unions and the likelihood required disclosures may confuse credit union members. The Board disagrees that credit union members will find the disclosures confusing

but, as intended by the rule, the disclosures will provide important information to members about the fees associated with overdraft protection.

The majority of the credit union leagues that commented on the final rule generally supported it, but suggested the mandatory compliance date should be January 1, 2007. Two leagues raised concerns with the definition of “advertisement” in §707.2(b), and one suggested NCUA provide a list of what constitutes “advertising” so credit unions will have a clear understanding of when the additional, cumulative disclosures are mandatory. Another league recommended NCUA use the term “courtesy overdraft protection program” to clarify that the rule covers only those programs in which a credit union pays a draft on behalf of a member and not the situation in which it transfers funds from another account to cover the draft. This same league also expressed concerns that the disclosures required if a credit union advertises its program may become excessive. The one league that opposed the final rule commented that credit unions already give its members sufficient disclosures.

A nonprofit organization that specializes in consumer credit issues on behalf of low-income people, submitted the same comments it submitted during the Federal Reserve’s rulemaking. This organization advocates the regulation of courtesy overdraft protection programs under TILA instead of TISA, commented that problems with bounce protection have increased since the Federal

Reserve's rulemaking, and asked NCUA to consider TILA coverage for courtesy overdraft protection programs.

While NCUA appreciates these comments, the Board must comply with TISA and adopt a rule that is similar to the Federal Reserve's Regulation DD. Additionally, the amendments to part 707 recognize that a courtesy overdraft service is a feature and term of a share account and the fees associated with the service are assessed against the share account. These rules under part 707 do not preclude a future determination by the Federal Reserve that TILA disclosures would also benefit consumers.

The consumer who commented on this rulemaking expressed concern about the purpose of the rulemaking and questioned why the final rule required institutions to disclose fees for paid and returned items separately. The consumer was concerned that all institutions would not disclose the same fees or include the same fees in each total and does not believe the rule would help consumers who regularly pay fees for courtesy overdraft protection programs. The consumer also commented that the mandatory compliance date should be January 1, 2007.

When the Board issued the interim rule, it adopted the July 1, 2006 compliance date to track the Federal Reserve's amendments to Regulation DD. The Board appreciates, however, the concern about credit unions' ability to reprogram their systems in time to provide the required disclosures in periodic statements by

July 1, 2006. The Board wants to ensure smaller credit unions that may not rely solely on software vendors have adequate time to comply with the new disclosure rules. Because TISA disclosures allow consumers to make meaningful comparisons between the competing claims of depository institutions regarding deposit accounts, the Board is also concerned that consumers may be disadvantaged by delaying the compliance date for credit unions, but any disadvantage to consumers caused by a delay is outweighed by the Board's concern that members receive accurate disclosures about their share accounts. Accordingly, the Board is amending the mandatory compliance date to October 1, 2006.

### **III. The Final Rule**

To comply with the Board's obligation under TISA, it is adopting the interim final revisions to part 707 and the accompanying official staff interpretation as a final rule. Because NCUA has made no substantive changes to the interim rule, the regulatory text has not been republished in the Federal Register. The following is a summary of the revisions to Part 707 and the staff commentary. This rule tracks closely the Federal Reserve's recent amendments to Regulation DD, and was published with minor modifications to account for the unique nature of credit union payments of dividends as opposed to interest in the Federal Register in December 2005. 70 FR 29582 (May 24, 2005); 70 FR 72895 (December 8, 2005).

### Disclosures Concerning Overdraft Fees on Periodic Statements

Courtesy overdraft protection allows the payment of a check or debit transaction that would otherwise be rejected for non-sufficient funds (NSF). Payment of the item overdraws the member's account, and a fee is charged for paying the NSF item. Under courtesy overdraft protection programs, there is no written agreement between the member and credit union to pay NSF items. Instead, payment is made at the discretion of the credit union, and a fee is charged for each item paid. A transfer of available funds from another of a member's share accounts to cover an overdraft is not courtesy overdraft protection for the purposes of this rule. Generally, courtesy overdraft protection services allow a credit union to make an occasional, manual payment of an overdraft on a member's behalf. Some financial institutions have automated the decision and payment process however.

Credit unions that provide courtesy overdraft protection, but do not advertise it, must disclose fees debited from a share account on their periodic statements. If fees of the same type are imposed more than once in a statement period, then the fees may be itemized separately or grouped together and the total disclosed. Credit unions that advertise courtesy overdraft protection programs must separately disclose the total fees charged to an account for paying items when there are NSFs and the total fees for returning items unpaid for both the statement period and calendar year to date. Credit unions that do not provide

courtesy overdraft protection or advertise the payment of overdrafts would not be required to provide the new periodic statement disclosures under the final rule.

#### Account-Opening Disclosures

All credit unions that have a courtesy overdraft protection program must specify in account-opening disclosures the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient to state that the fee is imposed for overdrafts created by checks, in-person withdrawals, ATM withdrawals, or by other electronic means, as applicable.

#### Advertising Rules

Along with providing additional disclosures in periodic statements when they advertise courtesy overdraft protection, credit unions must include disclosures in their advertisements. For the purpose of courtesy overdraft protection, an advertisement is a commercial message that promotes the availability or terms of the service with a share account. To avoid confusion with traditional lines of credit, credit unions that promote the payment of overdrafts must include in their advertisements about the service:

- (1) The applicable fees or charges;
- (2) The categories of transactions covered;
- (3) The time period members have to repay or cover any overdraft; and

- (4) The circumstances under which the credit union would not pay an overdraft.

Stating the available overdraft limit or the amount of funds available on a periodic statement would be considered an advertisement triggering the required disclosures.

The final rule provides safe harbors from the advertising requirements similar to those for the periodic statement disclosure requirements. The advertising disclosure requirements would not apply to credit unions when they:

- (1) Promote a traditional line of credit;
- (2) Respond to a member-initiated inquiry;
- (3) Engage in an in-person discussion with a member;
- (4) Make disclosures required by federal or other applicable law;
- (5) Notify a member about a specific overdraft in their account;
- (6) Discuss their right to pay overdrafts in a share account agreement;
- (7) Provide a notice to a member that items overdrawing an account may trigger a fee; or
- (8) Provide educational materials.

Advertising disclosures are not required on ATM receipts or for advertisements using broadcast media, billboards, or telephone response systems. Limited advertising disclosures are required on ATM screens, telephone response

machines, and indoor signs. For example, a sign in a credit union lobby advertising courtesy overdraft protection must state that fees may apply and direct members to contact a credit union employee for more information.

#### Prohibiting Misleading Advertisements

The rule extends TISA's prohibition against advertisements, announcements, or solicitations that are misleading or misrepresent the deposit agreement to communications with members about the terms of their existing accounts. The staff interpretation provides examples of advertisements that would ordinarily be deemed misleading.

### **IV. Regulatory Procedures**

#### Regulatory Flexibility Analysis

The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act. 5 U.S.C. 601 et seq. TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow members to make meaningful comparisons between different accounts and also allow members to make informed judgments about the use of their accounts.

12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is adopting revisions to part 707 to address the uniformity and adequacy of

credit unions' disclosure of fees associated with courtesy overdraft services generally and to address concerns about advertised courtesy overdraft services in particular. The existing regulation is amended to require credit unions offering certain courtesy overdraft services to provide more complete information regarding those services. The Board believes that the revisions to part 707 are within its authority to adopt provisions that carry out the purposes of the statute.

There are other laws and regulations that credit unions must consider when administering an overdraft protection program, including the Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq., 12 CFR part 202 (Regulation B), and 12 CFR 701.21(c)(3). Although other laws and regulations may apply to credit unions' payment of overdrafts, the final revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the final revisions to part 707 are consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

Approximately 2,666 of the credit unions in the United States that must comply with TISA have assets of \$10 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act, based on 2004 call report data. The Board believes that almost all small credit unions that offer accounts where overdraft or returned-item fees are imposed currently send periodic

statements on those accounts, although the number of small credit unions that promote their courtesy overdraft services is unknown. For those credit unions that promote the payment of overdrafts in an advertisement, periodic statement disclosures will need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small credit unions will have to review, and perhaps revise account-opening disclosures and marketing materials.

The revisions to part 707 require all credit unions to provide more complete information to members regarding courtesy overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. Credit unions that provide courtesy overdraft services must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount for returning items unpaid. If a credit union promotes or advertises its courtesy overdraft protection program, the credit union must provide these disclosures for the statement period and for the calendar year to date for each account to which the credit union provides the service. Certain advertising practices are prohibited, and additional disclosures on advertisements of courtesy overdraft services are required.

The Board solicited comment on how the burden of disclosures on credit unions could be minimized, but received no suggestions. Therefore, NCUA is issuing a final rule with only clarifying modifications and no substantive changes.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., the Board submitted the information collection requirements contained in this final rule to the Office of Management and Budget (OMB). OMB approved the information collection on December 28, 2005, under control number 3133-0134.

NCUA estimated the total, continuing annual burden for the Truth in Savings program to be 12,076,057 hours for 9,128 credit unions. Two credit unions commented that the rule was overly burdensome, but provided no estimated costs, burden hours, or suggestions to minimize the burden.

NCUA has a continuing interest in the public's opinions of our information collections. Interested parties may send comments regarding the burden estimate or any other aspect of the collection, including suggestions for reducing the burden, at any time, to Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, E-mail: [regcomments@ncua.gov](mailto:regcomments@ncua.gov), or Fax: (703) 518-6319. Send a copy of comments on the information collection to NCUA Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503, or fax (202) 395-6974 also. Include “Comments on Part 707 Truth in Savings” in the comments header.

#### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the rule may be reviewed.

#### **List of Subjects in 12 CFR part 707**

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

For the reasons set forth in the preamble, the Board amends 12 CFR part 707 as set forth below:

#### **PART 707 -- TRUTH IN SAVINGS**

Accordingly, the interim rule amending 12 CFR part 707, which was published at 70 FR 72898 on December 8, 2005, is adopted as a final rule without change.

By the National Credit Union Administration Board on April 20, 2006.

/s/

Mary F. Rupp

Secretary of the Board